

DEPOSITION OF CLARENCE MOSES

MARCH 17, 2006

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

THE ESTATE OF ERIK A. POWELL,) Civil No.
THROUGH PERSONAL REPRESENTATIVE) CV04-00428 LEK
MARY K. POWELL; THE ESTATE OF)
JAMES D. LAUGHLIN, THROUGH PERSONAL)
REPRESENTATIVE RAGINAE C. LAUGHLIN;)
MARY K. POWELL, INDIVIDUALLY;)
RAGINAE C. LAUGHLIN, INDIVIDUALLY;)
CHLOE LAUGHLIN, A MINOR, THROUGH)
HER NEXT FRIEND, RAGINAE C.)
LAUGHLIN,)

Plaintiffs,)

vs.)

CITY AND COUNTY OF HONOLULU,)

Defendant,)

and)

CITY AND COUNTY OF HONOLULU,)

Third-Party Plaintiff,)

vs.)

UNIVERSITY OF HAWAII, a body)
Corporate; JOHN DOES 1-10, JANE)
DOES 1-10; DOE CORPORATIONS and)
DOE ENTITIES,)

Third-Party Defendants.)

DEPOSITION OF CLARENCE MOSES

Taken on behalf of Plaintiffs at the Law Offices of Ian L. Mattoch, 737 Bishop Street, Suite 1835, Honolulu Hawaii, commencing at 1:00 p.m. on March 17, 2006, pursuant to Notice.

Before: WILLIAM T. BARTON, RPR, CSR NO. 391

EXHIBIT "23"

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1 the towers?

2 A. Yes.

3 Q. Do you know how long that will be?

4 A. As soon as I pass my physical.

5 Q. Are you scheduled for a physical any time soon?

6 A. Not yet. I need to redo my doctors papers and
7 get a physical date.

8 Q. From your experience at Hanauma Bay, do you think
9 that four lifeguards were adequate to watch the entire bay?

10 MR. MAYESHIRO: Lacks foundation, calls for
11 speculation, vague and ambiguous.

12 A. Well, for me personally, I would say no. But
13 that's -- people we can schedule, we work with who they
14 give us. Or sometimes if you're not lucky, you work there
15 by yourself.

16 Q. What do you mean, "by yourself"?

17 A. Meaning a lot of guys call in sick or off or
18 can't find nobody. You're there solo.

19 Q. And I'm asking what your opinion is when you say
20 you don't think that it was enough. What do you think they
21 could have done differently?

22 MR. MAYESHIRO: Lacks foundation. Calls for
23 speculation. Vague and ambiguous.

24 A. If you go -- they got that USLA book that governs
25 lifeguards. According to them, it's one guard per 50

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1 people.

2 Q. So do you think more lifeguards would have
3 helped the situation?

4 MR. MAYESHIRO: Same objections.

5 A. It all depends where they was at the time. If
6 you can't see them, you can't get them.

7 Q. Based on the number of people, though, that came
8 to Hanauma Bay regularly, do you think that more lifeguards
9 would have helped in this situation?

10 MR. MAYESHIRO: Same objections.

11 A. Like I said, it still comes down to if you can't
12 see them, you can't get them.

13 Q. How about warning signs? Do you think there
14 could have been more warning signs?

15 A. Well, you know, we always encourage warning
16 signs. Any kind of signage is good for us. But we are
17 just limited with the signs that we have.

18 Q. And have you expressed this need for more signs,
19 or that it would help you guys, to anyone?

20 A. Yeah. We do talk to the supervisors, saying we
21 need signs. And for them, you know, it takes time for them
22 to get the signs before we get them and put it up, put it
23 out. You never know when you're going to get them.

24 Q. That's the lifeguard supervisors or the park
25 supervisors or both?

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1 A. It's usually the lifeguard supervisor is doing
2 all of that stuff.

3 Q. Do you recall that in 2002, there were 12
4 drownings that year?

5 MR. MAYESHIRO: Lacks foundation. Calls for
6 speculation.

7 A. All I can say, I know one year had 12 drownings,
8 but I'm not too sure what year that was.

9 Q. And that year, do you have an opinion as to why
10 there were so many?

11 MR. MAYESHIRO: Calls for speculation.

12 A. I went to that meeting that they had when the
13 coroner came up and he was giving his speech about the
14 possible causes.

15 Q. When was that meeting?

16 A. I'm not too sure when it was. But all the park
17 staff was there from Emergency Services.

18 Q. What were the causes that the coroner said?

19 A. He didn't know. Half was unknown. So my
20 reasoning is that the age difference on most of the
21 drownings, over half was all over 55.

22 And from there, 55 years of age from where?
23 Detroit? Alaska? Where there's no water or anyplace where
24 they never did snorkel before. Anything could happen, gone
25 wrong. Medical reasons or mask or snorkel. Anything could

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1 have gone wrong.

2 Q. Do you have any opinion as to why there were so
3 many more that year than other years?

4 MR. MAYESHIRO: Objection. Lacks foundation.
5 Calls for speculation. Asked and answered.

6 A. It's hard to say.

7 Q. And of the 12 drownings that happened in that
8 particular year, do you remember how many you were involved
9 with?

10 MR. MAYESHIRO: Lacks foundation.

11 A. That's kind of far back. I can't recall how
12 many.

13 Q. Your full-time days at Hanauma Bay, were they
14 always Monday through Friday, or were there certain days
15 that you didn't work?

16 A. I was off -- those days, I think I was off like
17 Monday, Tuesday.

18 Q. Tuesday the park is closed, right?

19 A. Yeah.

20 Q. Do you have any other certifications, other than
21 the ones that you got through the lifeguard training?

22 A. Scuba. That's all.

23 Q. Scuba. Are there any other changes that the park
24 made after these drownings, as far as signage? We talked
25 about the lifeguard number. Anything else?